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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JAN 29 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed a motion to reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed the Form I-140 petition on October 3, 2011, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a special education teacher for [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on July 5, 2012, having found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The petitioner filed a motion to reconsider the decision on August 6, 2012, which the director dismissed on September 17, 2012, stating that it did not meet the requirements of such a motion. The petitioner has appealed the dismissal of the motion.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The petitioner, on appeal, disputes elements of the director's July 2012 denial decision. The matter on appeal, however, is not the July 2012 denial of the petition, but the September 2012 dismissal of the motion to reconsider. The petitioner must overcome the September 2012 dismissal of the motion before the AAO will revisit the merits of any earlier decision. The present filing is not a timely appeal of the original denial decision, and the AAO will not treat it as though it were.

Counsel, on appeal, acknowledges the dismissal of the motion to reconsider, but makes no evident attempt to rebut or overcome it. Counsel, instead, essentially appeals the denial as though the motion and its dismissal never happened. Therefore, counsel has not shown that the AAO should withdraw the director's dismissal of the motion in order to clear the way for review of the underlying denial.

Because counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in the director's last decision, counsel has specified no acceptable basis for the appeal and the AAO must summarily dismiss the appeal.

ORDER: The appeal is dismissed.